Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1444

VINCENT DeCARLO,

*Petitioner,*

*vs.*

THE STATE OF NEW JERSEY,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

## PETITION FOR WRIT OF CERTIORARI

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No.

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VINCENT DeCARLO,

*Petitioner,*

*vs.*

THE STATE OF NEW JERSEY

*Respondent.*

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## Petition for Writ of Certiorari to the Supreme Court of New Jersey

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The Petitioner, Vincent DeCarlo respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of New Jersey denying petitioner's Petition for Certification entered in this proceeding on December 19th, 1978.

## OPINION BELOW

The opinions of the Law Division and the Appellate Division of the State of New Jersey appears in the Appendix hereto. No opinion was rendered by the Supreme Court of New Jersey.

## JURISDICTION

The judgment of the Supreme Court was entered on December 19th, 1978. This Petition for Certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

## QUESTIONS PRESENTED

1. Whether a Public Employee is deprived of due process of law in violation of the Fifth and Fourteenth Amendments of the United States Constitution when he is denied a hearing prior to a determination that his conviction for conspiracy to violate the Public Bidding Laws was a crime of Moral Turpitude.

## STATEMENT OF THE CASE

On February 8th, 1974, Vincent DeCarlo, a contractor was found guilty of conspiracy to violate the public bidding statute of New Jersey with reference to work he performed in the City of Union City. Vincent DeCarlo was a policeman for the Town of North Bergen. The Commissioner of Public Safety held a hearing on January 5th and January 11th, 1977 and determined that the offense was not one of moral turpitude and Vincent DeCarlo was reinstated as a member of the North Bergen Police Department.

Some eight months later on August 2nd, 1977, plantiff-respondent, the Prosecutor of Hudson County instituted a civil suit in the Superior Court seeking the removal of Vincent DeCarlo from his employment as a police officer by the Township of North Bergen. An



answer was filed by Vincent DeCarlo on August 30th, 1977. The court listed the case for a pre-trial and in fact a pre-trial was held September 27th, 1977. Defendant-petitioner objected to the procedure being followed by the court in that the court was barring defendant-petitioner from presenting factual proof. Defendant-petitioner, Vincent DeCarlo filed exceptions to the pretrial order since the court was scheduling the case for argument without permitting the parties to present any factual evidence.

On December 8th, 1977, the trial judge after listening to the arguments of counsel advised the parties that he had tentatively decided the issues in favor of plaintiff-respondent but he directed that plaintiff-respondent amend his complaint to add the Board of Commissioners and the Township of North Bergen as parties. The court signed an order directing the filing of an amended complaint. An amended complaint was filed. The Commissioners and Township of North Bergen filed an answer in which they alleged that the Administrative decision that had been previously made by the Commissioner of Public Safety in which he found that the offense for which Vincent DeCarlo had been convicted did not involve moral turpitude was supported by the facts. As soon as the answer was filed, the court listed the case for pretrial. At the pretrial, which was held on January 18th, 1978, the attorney for the Township of North Bergen advised the court that he would adopt the arguments and brief that had been filed on behalf of Vincent DeCarlo. After the attorney for North Bergen made these representations, the court stated that it would render its decision removing Vincent DeCarlo as a police officer. On September 21st, 1978, the Appellate Division affirmed the order removing Vincent DeCarlo as a police officer.

For eighteen years, Vincent DeCarlo had been a police officer in the Township of North Bergen. In addition, Vincent DeCarlo was self employed as a private contractor. In 1971 and 1972 he did some contracting work for the City of Union City. He had never performed any contracting work for a municipality or government agency before this time. This contracting work was separate and apart from his police work.

As a consequence of doing this work and the fact that no bids had been submitted for the work, Vincent DeCarlo was convicted of the offense of having committed a conspiracy to violate the public bidding laws. Prior to the submission of the criminal case to the jury, the judge struck from the indictment, all allegations that Vincent DeCarlo had cheated and defrauded the City of Union City.

Subsequent to the conviction, the Commissioner of Public Safety held a disciplinary hearing to determine if Vincent DeCarlo should be removed from office as a consequence of the conviction. After investigating the facts, the commissioner determined that the offense for which Vincent DeCarlo had been convicted was not one of moral turpitude. The commissioner reinstated Vincent DeCarlo as a police officer.

In the present case, the Superior Court Judge, however, without holding a hearing concerning the facts of the case and without examining the record of the trial determined that the offense for which Vincent DeCarlo had been convicted involved moral turpitude and that Vincent DeCarlo should immediately be removed from office.



## REASONS FOR GRANTING THE WRIT

**The decision below conflicts with the decisions of the United States Supreme Court as to the proper interpretation of the Fourth and Fifth Amendments to the United States Constitution.**

The essence of due process of law is the right to adequate notice and a fair hearing. *Opp. Cotton Mills v. Administrator*, 312 U.S. 126 (1941). At a hearing a party has a right to present evidence. *Morgan v. United States*, 304 U.S. 1, 18 (1938).

It is clear that in this case, Vincent DeCarlo had a recognized right to continued employment. He was a tenured civil service employee. In the present case the state not only removed Vincent DeCarlo from his employment but did so in a manner that subjected him to moral condemnation. The state removed him on the grounds that his conduct constituted moral turpitude. In *Board of Regents v. Roth*, 408 U.S. 564 at 573 (1972):

> "The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so, this would be a different case. For "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantincau*, 400 U.S. 433, 437, 91 S. Ct. 507, 27 L.Ed.2d 515, 519.* * * In such a case, due process would accord an opportunity to refute the charge before University officials. In the present case, however, there is no suggestion whatever that the respondent's interest in his "good name, reputation, honor, or integrity" is at stake.

A further effect of the removal of DeCarlo is that the Chief Examiner and Secretary of Civil Service can automatically disqualify him from further state service. *N.J.A.C.* 4:1-8.14(a). Such a concrete injury is a protectable liberty interest. *Board of Regents v. Roth, supra; Paul v. Davis,* 424 U.S. 693 (1976); *Bishop v. Wood,* 426 U.S. 341 (1976).

It has been held that the statutes in New Jersey which provide for forfeiture of office upon conviction of an offense involving moral turpitude are not self-executing. *Newark v. Dept. of Civil Service,* 68 N.J. Super. 416, 432 (App. Div. 1961); *Clark v. Ennis,* 45 N.J.L. 69, 72 (Sup. Ct. 1883); *Galloway v. Council of Clark Township,* 92 N.J. Super. 409, 418 (Law Div. 1966).

It is a *sine qua non* that prior to removal there must be a determination that under the particular facts and the application of the relevant legal rules the employee committed an offense of moral turpitude. *Newark v. Department of Civil Service,* 68 N.J. Super. at 422-425, *supra.* In *Galloway v. Council of Clark Township, supra,* the Court followed *Newark v. Dept. of Civil Service, supra,* holding at p. 418:

> "Finally the accused has the right to a hearing before the appropriate agency to determine if the crime or offense for which he was convicted • • • involved moral turpitude." *Galloway,* 409 N.J. Super. at 418.

Due process of law entitled Vincent DeCarlo to a hearing in which he was entitled to be heard. *Fuentes v. Shevin,* 407 U.S. 67, 80 (1972); *Baldwin v. Hale,* 68 U.S. (1 Wall) 223, 233 (1864). In *Green v. McElroy,* 360 U.S. 474, 496 (1959), the Supreme Court stated:

> "Certain principles have remained relatively immutable in our jurisprudence. One of these is that where government action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's cases must be disclosed to the individual so that he has an opportunity to show that it is untrue.



Those cases which determined that a factual hearing must be held when the state seeks removal of office because the offense involved moral turpitude did not arise in a vacuum. The necessity for a hearing developed because of the difficulty in defining the extent and scope of moral turpitude.

"Moral turpitude" has been defined as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Black's Law Dictionary* (4th Ed.), p. 1160.

In attempting to define moral turpitude in a specific case, conflicting rules have arisen. The issue of exactly what crimes involve or do not involve moral turpitude has been the subject of extensive annotations. *Annotation,* "Infamous Crime or one involving Moral Turpitude—disqualification—office," 52 A.L.R. 2d 1314 (1959); *See also Annotation,* 95 L.Ed. 899 (1951); *Annotation,* "Immigration and Nationality Act—crime involving Moral Turpitude," 23 A.L.R. Fed. 480 (1975). Many of the crimes cited therein include and involve violence, *i.e.*, murder, assault and those of baseness (robbery, larceny, burglary involving some form of theft or fraudulent practice), fraud, embezzlement, extortion and tax evasion. On the other hand, disorderly conduct offenses and carrying a concealed weapon are generally held not to involve moral turpitude. *Annotation,* supra. 52 A.L.R. 2d 1314. The

United States Supreme Court discussed "moral turpitude" in *Jordan v. DeGeorge*, 341 U.S. 223, 227 (1951) in connection with a conspiracy to violate the Internal Revenue Code. Noting that the term "moral turpitude" has deep roots in the law, it did not find the term too vague and followed state and federal court decisions in holding that a crime in which fraud is an ingredient involved moral turpitude.

In *State of N.J. Div. of Alcohol Bev. Cont. v. McNally*, 91 N.J. Super. 513 (App. Div. 1966), where the defendant was convicted for bookmaking, the court held that insofar as liquor licenses were concerned, an examination of the underlying facts to determine whether there existed moral turpitude should be made, unless the crime is of such a nature that moral turpitude or its absence must be conclusively presumed. The court, emphasizing the need for such a factual examination further stated: [o]n the other hand, we cannot agree with ABC's contention that all bookmaking necessarily involved moral turpitude." *Id.* at 518.

In *State Bd. of Med. Examiners v. Weiner*, 68 N.J. Super. 464, 487-488 (App. Div. 1961) the defendant-physician was accused of manslaughter. The court discussed the rationales for the rules prevailing in other jurisdictions as to whether the underlying facts should be considered and, while specifically refraining from deciding that it was improper for an administrative agency to look to the fact, said "we cannot altogether accept appellant's motion that manslaughter . . . can under no circumstances involve moral turpitude," and "in a wide range of crimes, including manslaughter, the fact of moral turpitude may not necessarily be ascertainable from either the indictment or the record of conviction, but may have to be sought in the details of the manner in which the particular defendant perpetrated the offense."



And, as was stated in *Galloway v. Council of Clark Tp., supra:*

> "The concept of moral turpitude depends upon the state of public morals, and may vary according to the community or the times. * * * This element of moral turpitude is necessarily adaptive; for it is itself defined by the state of public morals, and thus far fits the action to be at all times accommodated to the common sense of the community. * * * There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature or character of the offense unless, or course, it be an offense inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide." (at p. 887). 92 N.J. Super at 419-420.

It is important to note that if Vincent DeCarlo had been convicted of an offense involving the administration of his office, then there would be no necessity for a factual hearing to make a determination if the offense involved moral turpitude. This was not an issue in the present case, since this offense was separate and apart from the administration of Vincent DeCarlo's office as a policeman in North Bergen. All the cases which speak of automatic forfeiture of employment upon conviction without a need for a judgment of forfeiture involved only crimes clearly touching the administration of offices or positions. *Walter v. Police & Fire, Etc., Trenton*, 120 N.J.L. 39, 41 (Sup. Ct. 1938) (police officer convicted for malfeasance in office); *Mulsoff v. Sloat*, 8 N.J. Misc. 554, 555 (Sup. Ct. 1930) (police officer convicted of assault and battery in making arrest); *Hayes v. Hudson County Bd. of Freeholders*, 116 N.J. Super. 21, 26 (App. Div. 1971) (County freeholder convicted of being personally interested in sale of goods

to the county). All involved the cases where one automatically forfeited his office under *N.J.S.* 2A:135-9 on conviction of a crime touching the administration of office.

Not one of the cases cited by the trial court addressed itself to the question of whether the conspiracy to commit the offense was a greater evil than the substantive offense itself. It is doubtful if even the court in *Dennis v. United States*, 341 U.S. 494, 573 (1950) cited by the trial court and decided at the height of the McCarthy era would have followed the reasoning of the trial court to its logical conclusion that a conspiracy to overthrow the government was a greater evil than the overthrowing of the government itself.

What cannot be overlooked is that in the criminal case in which Vincent DeCarlo was convicted; the trial court determined that there was no proof that the City of Union City had been defrauded. The trial court not only granted a judgment of acquittal on the substantive charge, but also struck from the indictment all allegations that the defendant conspired to cheat and defraud the City of Union City. In other words, all elements of fraud had been removed from the case. The jury in effect was told that Vincent DeCarlo could be convicted of a conspiracy to violate the bidding laws even if he had no intent to defraud the city. With the conviction being in his posture, it becomes imperative for someone to examine the record to determine if moral turpiture was involved in this particular offense. In determining this issue among other facts, it might be relevant to know that Vincent DeCarlo had never before performed contracting work for a municipality. It was also undisputed at the criminal trial that all the work he performed exhibited good workmanship. Vincent DeCarlo made no profit from the work that he did. Vincent DeCarlo never paid anything to anyone in order to obtain this work.



If the trial court had been an administrative hearing examiner due process of law would have entitled Vincent DeCarlo to present facts in support of his position. *Morgan v. United States, supra; Green v. McElroy; supra; Merry Heart Nurses and Conv. Home v. Dougherty,* 131 N.J. Super. 412, 419 (App. Div. 1974). Due process applies no less to a court of law and Vincent DeCarlo should have been given an opportunity to present facts in support of his position that the particular acts for which he had been convicted did not constitute a crime of moral turpitude.

## CONCLUSION

For these reasons, a Writ of Certiorari should be issued to review the judgment of the Supreme Court of New Jersey.

Respectfully submitted,

MILLER, HOCHMAN,
MEYERSON & SCHAEFFER
*Attorneys for Vincent DeCarlo*

By: /s/ Gerald D. Miller
GERALD D. MILLER

GERALD D. MILLER
*Of Counsel*



## SUPPLEMENTAL APPENDIX

## OPINION

Decided:

Mr. Russell V. D'Italia, Assistant Prosecutor, for plaintiff (Mr. James T. O'Halloran, Prosecutor of Hudson County, attorney).

Mr. Gerald D. Miller for defendant Vincent DeCarlo (Messrs. Miller, Hochman, Meyerson and Schaeffer, attorneys).

Mr. Ralph R. Feigelson for defendants Peter M. Mocco, Ralph Affuso, Alphonse Pinto, William V. Duffy, as Constituting the Board of Commissioners of the Township of North Bergen in the County of Hudson.

BILDER, J.S.C.

This is an action In Lieu of Prerogative Writ brought by the Hudson County Prosecutor to remove a North Bergen Police Officer from office pursuant to *N.J.S.A.* 2A:135-9 —a statute mandating forfeiture of office upon conviction of certain offenses. By order of this court, the governing body of North Bergen was added as a party defendant.

On February 8, 1974 Vincent DeCarlo was convicted of conspiring to violate public bidding laws. Although his office was declared forfeit on December 29, 1976, he was reinstated on January 14, 1977 following a determination by the Commissioner of Public Safety of North Bergen that the crime of which plaintiff was convicted is not one of moral turpitude.

*N.J.S.A.* 2A:135-9 provides as follows:

"Any person holding an office or position, elective or appointive, under the government of this state or of any agency or political subdivision thereof, who is convicted upon, or pleads guilty, non vult or nolo contendere to, an indictment, accusation or complaint charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office or position, or which involves moral turpitude, shall forfeit his office or position and cease to hold it from the date of his conviction or entry or plea.

"If the conviction of such officer be reversed, he shall be restored to his office or position with all the rights and emoluments thereof from the date of the forfeiture."

I.

It is not disputed that the office held by defendant is within the statute, that he was convicted of the First Count of Indictment No. 65 of the 1971 term and that the Indictment charges him with the commission of a misdemeanor which does *not* touch on the administration of his office. At issue is the question as to whether the offense of which he was charged and found guilty is one involving moral turpitude.

Our courts have not heretofore passed on the precise question as to whether a conspiracy to violate the bidding laws is a crime involving moral turpitude. They have however determined the meaning of "moral turpitude" in the context of other crimes.[1] Thus guidance in resolving this otherwise unique case is available.

1. The following crimes have been found to involve moral turpitude: larceny, *Raphalides v. N.J. Dept. of Civil Service*, 80 *N.J. Super.* 407 (App. Div. 1963); willful evasion of taxes, *Berardi v. Rutter*, 42 *N.J. Super.* 39 (App. Div. 1956) *aff'd* 23 *N.J.* 485, *DeMoura v. Newark*, 90 *N.J.* Super. 225 (App. Div. 1966); extortion and income tax evasion, *Mount v. Trustees of Pub. Emp. Retirement Syst.*, 133 *N.J. Super.* 72 (App. Div. 1975); fixing of parking tickets, *Fromm v. Bd. of Directors of Police, etc., Retire. System*, 81 *N.J. Super.* 138 (App. Div. 1963); possession of goods stolen from interstate shipment, *Weinstein v. Div. of Alcoh. Bev. Control*, 70 *N.J. Super.* 164 (App. Div. 1961); concealing and withholding stolen property, *Severini v. State, etc., Div. of Alcoh. Bev. Control*, 82 *N.J. Super.* 1 (App. Div. 1964); conspiracy to obtain money for a zoning variance, *Galloway v. Council of Clark Tp.*, 92 *N.J. Super.* 409 (Law Div. 1966) *aff'd* 94 *N.J. Super.* 527 (App. Div. 1967).



It is well settled law that where the intent to defraud is an essential element of a crime, that crime is one of moral turpitude. *Jordem v. DeGeorge*, 341 U.S. 223, 227 (1950); *Berardi v. Rutter*, 42 N.J. Super. 39, 48 (App. Div. 1956) *aff'd* 23 N.J. 485 (1957).

The First Count of Indictment No. 65 of the 1971 term generally charges that defendant conspired "to pervert the due administration of the laws of the State of New Jersey pertaining to the requirements for public advertisement for bids and public bidding in public contracts" and "to violate the criminal laws of the State of New Jersey pertaining to the misconduct in office of public officials."

It is not necessary to determine the existence of moral turpitude from the substantive offense, the conspiracy itself denotes moral turpitude—*i.e.*, the fact of the conspiracy—the agreement to violate the bidding laws—connotes moral turpitude. This "partnership in criminal purposes"[2] to violate the public bidding laws is in itself a fraud upon the State. The public's right to the benefits of public advertising and bidding were defeated, other contractors were cheated of their right to equal bidding opportunity, and the public was cheated of its right to have public officials conduct its affairs with propriety and in accordance with law. See *Fromm v. Bd. of Directors of Police, etc., Retire.*

2. *U.S. v. Kessel*, 218 *U.S.* 601, 608 (1910).

*System*, 81 N.J. Super. 138, 143 (App. Div. 1963).[3] "The basic rationale of the law of conspiracy is that a conspiracy may be an evil in itself, independently of any other evil it seeks to accomplish." *Dennis v. U.S.*, 341 U.S. 494, 573 (1950).

Thus, the offense for which defendant was found guilty is one involving moral turpitude within the meaning of *N.J.S.A.* 2A:135-9 and requires forfeiture of office.

II.

It is the contention of the defendant that even if his conviction required forfeiting by virtue of *N.J.S.A.* 2A:135-9, the relief herein sought is barred by a number of procedural barriers: the requirement for an administrative hearing, exhaustion of remedies, lack of timeliness under *R.* 4:69-6, lack of standing, absence of necessary parties, laches, *res adjudicata* and collateral estoppel.

To put these contentions in context, it must be noted that we are dealing here with the right to be a police officer of a man who entered into an agreement with public officials to act with them in violation of the laws of this State. He thereby was not only guilty in participating in the violation of those laws but in aiding to bring about their misconduct in office.

By enactment of *N.J.S.A.* 2A:135-9, the Legislature has enunciated a strong public policy against the holding of

3. In affirming a finding that alterations of public records was moral turpitude for the purposes of the police pension laws, the court said:

> "We need not pass on the question of whether an intent to defraud is requisite to a violation of *N.J.S.* 2A:136-1 [the statute proscribing alterations of public records]. Suffice for the purpose that under the facts of this case the *result of altering* and downgrading traffic tickets *was to defraud the State*. Even-handed justice for all traffic violators was defeated and the enforcement of our motor vehicle laws undermined." (Emphasis supplied.) *Fromm, supra*, 145.



public office upon certain criminal conviction. The importance of this public policy is underscored by the fact the forfeiture is immediate and automatic. It is not abated or stayed pending appeal. The job is forfeit upon conviction. In the event of a reversal, the office is restored with back pay. See discussion *Hayes v. Hudson County Bd. of Freeholders*, 116 N.J. Super. 21, 25-26 (App. Div. 1971). See also *Newark v. Department of Civil Service*, 68 N.J. Super. 416, 423 (App. Div. 1961).

This public policy becomes peculiarly relevant when applied to a police officer. As the guardian of our laws, he more than anyone must uphold and respect those laws. "A police officer occupies a unique position in our society. * * * [H]e stands in the public eye as an upholder of that which is morally and legally correct." *Fromm, supra*, 143.

The right which is being vindicated in this action is a public right. The Prosecutor seeks to enforce an important State policy.

In this setting it is clear that the procedural barriers erected by defendant must fail. They cannot act as a shield to permit his continuance as a police officer in contravention of *N.J.S.A.* 2A:135-9.

With respect to the administrative procedural barriers, defendant misconceives the nature of this proceeding. As already noted, *N.J.S.A.* 2A:135-9 mandates automatic forfeiture. The procedural setting is significantly different from that in which the removal is discretionary or the statute provides for a Civil Service hearing. *Cf. Newark v. Department of Civil Service*, 68 N.J. Super. 416 (App. Div. 1961). Nor is this a review of an administrative action. When defendant was found guilty, his office as police of-

ficer ceased. Since that date he has held that position illegally.[4]

With respect to *res adjudicata* and collateral estoppel, the plaintiff was not a party to that earlier departmental hearing and in any event the determination of the Police Commissioner is at best a determination of law by an administrative official and as such is not entitled to the application of these doctrines. See *U.S. v. Utah Construction Co.*, 384 U.S. 394, 421-422 (1966); *Russel v. Tenafly Bd. of Adjustment*, 31 N.J. 58, 65 (1959).[5]

With respect to laches, it need only be noted that, apart from the fact that there is no prejudice in the delay, this equitable principle cannot act as a shield to removal from an office which is being held contrary to law.

With respect to the plaintiff's standing to bring suit suffice it to say that in the absence of appropriate action of others[6] the Prosecutor, as the chief law enforcement officer of the County (*N.J.S.A.* 2A:158-5) has an obligation to see that the laws of the State are followed and that the illegal holding of this office is terminated.

Judgment is granted to the plaintiff. The office held by defendant DeCarlo as a North Bergen Police Officer is

4. It should be noted that even if this were a proceeding to review an administrative action, these procedural defenses would not defeat the public's right to have *N.J.S.A.* 2A:135-9 enforced. Exhaustion of remedies is not required in a case such as this where the question is solely one of law. *Nolan v. Fitzpatrick*, 9 *N.J.* 477 (1952); *Durgin v. Brown*, 37 *N.J.* 202 (1962). Nor is it required where the public interest demands a speedy solution. *Waldor v. Unterman*, 10 *N.J. Super.* 188 (App. Div. 1950); *Durgin v. Brown, supra.* Similarly the time limits of *R.* 4:69-6 yield to important public rights. See *Brunetti v. Borough of New Milford*, 68 *N.J.* 576, 588 (1975); Pressler, *Current N.J. Court Rules*, Comment to *R.* 4:69-6 at 803.

5. Of course if this were a proceeding to review an administrative action, *res adjudicata* and collateral estoppel would be inapplicable.

6. While not material to this decision, it is interesting to note that this matter was brought to the Prosecutor's attention by the Attorney General with the suggestion that an action for removal from office be instituted.



declared forfeit. Defendant DeCarlo shall immediately cease to hold such office and North Bergen shall forthwith carry out all administrative acts necessary and proper to the effectuation of this ruling. An order shall be submitted but the forfeiture and the order that defendant DeCarlo cease holding office as North Bergen Policeman shall be effective immediately.

## OPINION

Argued: September 12, 1978—Decided: September 21, 1978.

Before Judges Lynch, Crane and Horn.

On appeal from Superior Court, Law Division, Hudson County.

Mr. Leonard Meyerson argued the cause for appellant Vincent DeCarlo (Messrs. Mliler, Hochman, Meyerson & Schaeffer, attorneys; Mr. Gerald D. Miller on the brief).

Mr. Ralph R. Feigelson, attorney for appellant Township of North Bergen, submitted the matter on appellant DeCarlo's brief.

Mr. Lowell Espey, Deputy Attorney General, argued the cause for respondent (Mr. John J. Degnan, Attorney General, attorney; Mr. William F. Hyland, Former Attorney General).

PER CURIAM

The judgment is affirmed substantially for the reasons stated in the opinion of Judge Lawrence Bilder, reported at 156 N.J. Super. 249 (Law Div. 1978). We comment briefly on certain points.

Defendant urges that his conviction did not denote moral turpitude because the trial judge at the criminal proceeding struck out charges in the fourth count of the indictment that defendant and Paul J. Lombardo, municipal Director of Public Safety and one of the alleged conspirators, defrauded Taffaro Lumber Company. The fourth count charged defendant and Lombardo with obtaining "material and other things of value * * *" from Taffaro Lumber Co. and Union City with intent to cheat and defraud them.



But the fact remains that defendant on the first count of the indictment was found to have "willfully and knowingly" conspired "to pervert the due administration of the laws of the State of New Jersey pertaining to the requirements for public advertisement for bids and public bidding in public contracts" and "to violate the criminal laws of the State of New Jersey pertaining to the misconduct in office of public officials." Had the jury not found the necessary intent to have existed, it would not have found defendant guilty. Accordingly we concur in the trial judge's conclusion that the offense charged was one which involved moral turpitude.

We also agree with the trial judge that in a case such as this, where the conviction of a crime of moral turpitude is clearly present, defendant cannot go behind the "conviction" mentioned in the statute, *N.J.S.A.* 2A:135-9, in order to circumvent the statutory mandate of forfeiture of his office.

AFFIRMED.

A TRUE COPY

Elizabeth McLaughlin
Clerk

## ON PETITION FOR CERTIFICATION

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 19th day of December, 1978.

A TRUE COPY

Stephen Wamand
Clerk